Supreme Court, U.S.
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No. 02-979

IN THE
Supreme Court of the United States

BEVERLY A. BROPHY,
Petitioner,

v.

PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

RESPONDENT'S BRIEF IN OPPOSITION

LESLIE ANNE MILLER
General Counsel
Commonwealth of Pennsylvania

K. SCOTT ROY
Deputy General Counsel
(Counsel of Record)

ROGER H. CAFFIER
Chief Counsel

KELLY K. SMITH
Assistant Counsel

Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101-2210
Telephone: (717) 783-6563
Counsel for Respondent

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ST IVES BURRUPS/APPELLATE DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

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QUESTION PRESENTED FOR REVIEW

Did the Pennsylvania Commonwealth Court properly decide that Section 4(*l*)(4)(5) of the Pennsylvania Unemployment Compensation Law, which excludes wages earned in the employ of a son or daughter when determining eligibility for unemployment compensation benefits, does not violate equal protection?

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STATEMENT OF THE CASE

This matter involves the denial of unemployment compensation benefits by the Pennsylvania Unemployment Compensation Board of Review (Board) to Beverly A. Brophy (Claimant) because of her financial ineligibility under the Pennsylvania Unemployment Compensation Law.[1]

Claimant filed an application for benefits and established a "base year" consisting of the four calendar quarters of 2000. (App. at 16a to Petition for Writ of Certiorari (Petition)).[2] Under Pennsylvania's Unemployment Compensation Law, a claimant is paid benefits based upon wages earned during their "base year," which consists of the first four of the last five completed calendar quarters prior to their application for benefits.[3] These wages must be earned in "employment" as defined by Section 4(*l*) of the Law.[4] During the first and second quarters of 2000, Claimant was employed by Liberty Mutual and earned wages that were included in her base year for purposes of establishing her eligibility for unemployment compensation benefits. (App. at 16a). During the third and fourth quarters of 2000, Claimant performed services only for a sole proprietorship owned by her son, Frengel Painting. (App. at 16a-17a).

The Board determined Claimant was financially ineligible for unemployment compensation benefits under Sections 401 and 404 of the Pennsylvania Unemployment Compensation Law (Law)[5] on August 23, 2001. (App. at 15a-19a). It found that Claimant's wages from Frengel Painting could not be included in her base year because they were not earned in "employment" under Section 4(*l*)(4)(5) of the

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1. Act of December 5, 1936, Sec. Ex. Sess. P.L. 2897 (1937), *as amended*, PA. STAT. ANN. tit. 43 §§ 751-914 (West 1991, 1992 & Supp. 2002).

2. Claimant's Appendix will be cited as (App. at ___a).

3. See PA. STAT. ANN. tit. 43 §§ 753(a), 801 (West 1991, 1992 & Supp. 2002).

4. PA. STAT. ANN. tit. 43 § 753(*l*) (West 1992 & Supp. 2002).

5. PA. STAT. ANN. tit 43 §§ 801, 804 (West 1991 & Supp. 2002).

Law.[6] (App. at 15a-19a). Consequently, Claimant was financially ineligible for benefits because she did not have sufficient base year wages to qualify under Section 404 of the Law.

Claimant appealed to the Pennsylvania Commonwealth Court, and asserted that Section 4(*l*)(4)(5) of the Law violates her right to equal protection under both the Pennsylvania and United States Constitutions. The Commonwealth Court affirmed the Board in an unreported opinion on March 8, 2002. The court held that Section 4(*l*)(4)(5) is rationally related to a legitimate state interest. (App. at 2a-8a). *Brophy v. Unemployment Compensation Bd. of Review*, No. 2212 C.D. 2001 (Pa. Cmwlth. Mar. 8, 2002). Claimant then sought discretionary review in the Pennsylvania Supreme Court, which denied Claimant's Petition for Allowance of Appeal. *Brophy v. Unemployment Compensation Bd. of Review*, 808 A.2d 573 (Pa. 2002). (App. at 1a).

REASONS FOR DENYING THE WRIT

THE PENNSYLVANIA COMMONWEALTH COURT PROPERLY DECIDED THAT SECTION 4(*l*)(4)(5) OF THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION LAW, WHICH EXCLUDES WAGES EARNED IN THE EMPLOY OF A SON OR DAUGHTER WHEN DETERMINING ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION BENEFITS, DOES NOT VIOLATE EQUAL PROTECTION.

The Petition for Writ of Certiorari does not merit the Court's review for two reasons. First, the Pennsylvania Commonwealth Court's decision is consistent with this

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6. PA. STAT. ANN. tit. 43 § 753(*l*)(4)(5) (West 1992 & Supp. 2002). This Section provides that the word "employment" shall not include –

> Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age eighteen (18) in the employ of his father or mother.

Court's equal protection analysis in unemployment compensation cases. Second, Claimant has not demonstrated any conflict between the decision below and decisions by the courts of appeal or state courts of last resort.

1. The appropriate standard of review to apply to constitutional challenges to state unemployment compensation laws is whether the challenged provision bears a rational relationship to a legitimate state interest. *Ohio Bureau of Employment Servs. v. Hodory,* 431 U.S. 471 (1975); *Idaho Dep't of Employment v. Smith,* 434 U.S. 100 (1977). "This inquiry employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary. Such action by a legislature is presumed to be valid." *Hodory,* 431 U.S. at 489 *citing Dandridge v. Williams,* 397 U.S. 471 (1970). When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. *City of New Orleans v. Dukes,* 427 U.S. 297 (1976). Such legislation carries with it a strong presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality. *Duke Power Co. v. Carolina Envtl. Study Group,* 438 U.S. 59 (1978). In *Carmichael v. Southern Coal & Coke Co.,* 301 U.S. 495 (1936), this Court rejected a 14th Amendment challenge to a state unemployment tax statute that exempted family businesses.

The Pennsylvania Commonwealth Court's opinion reflects a proper application of well-settled law. Further, Claimant's assertion that Section 4(*l*)(4)(5) of Pennsylvania's Unemployment Compensation Law violates her right to equal protection ignores the legitimate state interest in preventing fraud and collusion, which assists the state in maintaining a self-supporting unemployment compensation system. Both Congress and this Court have recognized that

the states have broad authority to implement and administer unemployment compensation programs. *New York Tel. Co. v. New York State Dep't of Labor,* 440 U.S. 519 (1979).

The constitutionality of Section 4(*l*)(4)(5) of Pennsylvania's Unemployment Compensation Law was properly upheld by the Pennsylvania Commonwealth Court in this case, based on its earlier decision in *Bievenour v. Unemployment Compensation Board of Review,* 401 A.2d 594 (Pa. Cmwlth. 1979). In *Bievenour,* the Commonwealth Court recognized that the entitlement to unemployment compensation was not a fundamental right and classification by age was not a suspect classification. This classification would be upheld if it was based upon a reasonable basis. *Bievenour,* 401 A.2d at 619, *citing Dandridge, supra.* The Commonwealth Court found that Section 4(*l*)(4)(5) bears a rational relationship to the legitimate government interest in preventing fraud and that this prohibition "made good sense." *Id.*

Like the appellee in *Hodory,* Claimant "in effect urges that the Court consider only the needs of the employee seeking compensation," *Hodory,* 431 U.S. at 490, when she concentrates on the effect of the statute on her individual unemployment claim. This Court succinctly observed that "[t]he rationality of this treatment is, of course, independent of any 'innocence' of the workers collecting compensation." 431 U.S. at 491. This Court also recognized that state legislatures do not offend the Constitution when they exercise their expertise in designing effective unemployment compensation systems. *Id. citing Dandridge.*

Claimant asserts, without citing any authority, that the statute cannot be rationally related to a legitimate state purposes because, in her opinion, the statute is "easily thwarted" by incorporating a business. The Board disagrees that the process of incorporating a business "easily" thwarts the purpose of the statute, or that possible circumvention necessarily renders the statute unconstitutional. This Court has recognized that it is "by practical experience and not by

theoretical inconsistencies" that equal protection questions be reviewed and that there is no requirement that "all evils of the same genus be eradicated." *Railway Express Agency, Inc. v. New York,* 336 U.S. 106, 110 (1949).

Claimant has not demonstrated, or even alleged, that Pennsylvania's Commonwealth Court's decision conflicts with any relevant decision of this Court. Claimant's only attempt to demonstrate a conflict is by citing a provision in the New York unemployment law that does not exclude the wages here in question. She neglects to point out, however, that New York is perhaps the *only* state that does not exclude wages earned in the employ of one's son or daughter for unemployment compensation purposes. *See* H.R. Rep No. 755, 94th Cong., 1st Sess. at 22 (1975) (All states exclude service for an employer by his spouse or minor child and, except in New York, service of an individual in the employ of his son or daughter).

It is clear that the exclusion of family employment contained in the Pennsylvania Unemployment Compensation Law bears a rational relationship to a legitimate government interest in preventing fraud and collusion. Therefore, that provision does not violate the Fourteenth Amendment to the United States Constitution. Accordingly, the Pennsylvania Commonwealth Court correctly affirmed the Board's decision finding Claimant financially ineligible for unemployment compensation benefits.

2. Pennsylvania is not unique in excluding wages earned in the employ of a son or daughter when determining eligibility for government benefits, as mentioned above. *See* H.R. Rep. No. 755, 94th Cong., 1st Sess. at 22 (1975). Claimant fails to demonstrate any conflict between the decision below and decisions from either federal appellate courts or state courts of last resort.

Section 4(*l*)(4)(5) parallels a provision in the definition of "employment" in the Federal Unemployment Tax Act. 26 U.S.C.A. § 3306(c)(5) (FUTA). The Social Security Act

contains a similar exclusion. 42 U.S.C.A. § 410(a)(3)(B). In creating this exemption, Congress recognized the potential for fraud and collusion when a child employs a parent. The House Report accompanying the Social Security Act pertinently acknowledged the reason for this exclusion:

> This exclusion [service performed by an individual employed by his son, daughter or spouse, and service performed by a child under age 21 in the employ of his parent] is already contained in the Federal unemployment tax provisions of the existing law and is considered advisable because of the possibility offered by such employment for collusion in building up credits in certain cases which offer a high return for a small amount of contributions.

H.R.Rep. No. 728, 76th Cong., 1st Sess. at 46 (1939).

The Eleventh Circuit Court of Appeals rejected an identical argument to Claimant's in the context of the Social Security Act's exclusion of family employment. In upholding this exclusion, the court, pointed out:

> [T]he question raised is not whether a statutory provision precisely filters out those, and only those, who are in the factual position which generated the congressional concern reflected in the statute . . . Nor is the question whether the provision filters out a substantial part of the class which caused congressional concern, or whether it filters out more members of the class than nonmembers. The question is whether Congress, its concern having been reasonably aroused by the possibility of an abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would protect against its occurrence, and that the expense and other difficulties of individualized determinations justified the inherent imprecision of a prophylactic rule.

Cornelius v. Sullivan, 936 F.2d 1143, 1149 (11th Cir. 1991), *quoting Weinberger v. Salfi,* 422 U.S. 749 (1975). The Commonwealth Court's decision in this case fully comports with *Cornelius*. In contrast, Claimant does not offer any decisions of federal appellate courts or state courts of last resort that conflict with *Cornelius*. Accordingly, further review by this Court is not warranted.

CONCLUSION

For the foregoing reasons, the Pennsylvania Unemployment Compensation Board of Review respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

LESLIE ANNE MILLER
General Counsel
Commonwealth of Pennsylvania

K. SCOTT ROY
Deputy General Counsel
(*Counsel of Record*)

ROGER H. CAFFIER
Chief Counsel

KELLY K. SMITH
Assistant Counsel

Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101-2210
Telephone: (717) 783-6563
Counsel for Respondent